



DECISION MEMO



Max #1 Lode Exploration Project

USDA Forest Service, Northern Region

Nez Perce National Forest, Salmon River Ranger District

Idaho County, Idaho

I. Decision

I have decided to authorize mineral exploration for the Max #1 Lode Exploration Project located on the Salmon River Ranger District of the Nez Perce National Forest at T25N R3E Section 12, Boise Meridian, Idaho County (see attached map). My decision authorizes Mr. Robert Martin, the operator, to remove a one-yard bulk sample from a caved adit and an existing shallow pit, and to extract a channel sample of material between the adit and pit. Equipment used would be a small Kubota backhoe/loader and an ATV and trailer. Access to the project area would be by existing roads and trails. No road or trail work is anticipated, other than clearing and brushing. All disturbed areas would be reclaimed. As part of this decision, the operator will be required to:

General:

- ✓ Notify the District Ranger or minerals administrator at least 48 hours before any work is to begin.
- ✓ Wash all vehicles and equipment used at the site before being brought onto National Forest system lands to prevent the spread of noxious weeds.
- ✓ Avoid disturbance of wetlands and stream riparian zones.
- ✓ Avoid working on saturated soils.
- ✓ Prevent discharge of water into any live stream or wetland.
- ✓ Place weed free straw bales or install silt fence in places as identified by a Forest Service representative to minimize sediment migration from stockpiles and/or raw earth.
- ✓ Obtain prior approval from the Forest Service for cutting or removal of trees or other large live vegetation. Downfall may be removed as needed.
- ✓ Set aside cleared slash and green vegetation (e.g., beargrass) during test pit construction. Remove vegetation in clumps, if possible, with the soil mass intact. Store excavated topsoil and subsoil in separate stockpiles to be used during reclamation. Temporarily replant vegetation clumps in the topsoil stockpile.
- ✓ Maintain only one (1) pit open at any one time.
- ✓ Cover water pump intake hose with a 3/32" mesh screen.
- ✓ Collect process water in the existing pit. Regulate discharge to prevent overtopping the pit, and/or land apply excess water on a site designated by the Forest Service. (Application sites will typically be natural sumps or depressions, pits, or trap(s) that avoid impacts to wetlands or streams and minimizes impacts to other surface resources. Application rate will be such that overland flow is avoided.)

- ✓ Backfill and reclaim each test pit as soon as testing has been completed for that site.
- ✓ Follow the State of Idaho Best Management Practices (BMPs) for all surface disturbing activities, reclamation, and abandonment. BMPs are outlined in the *Best Management Practices for Mining in Idaho (Idaho BMPs)* (Idaho Department of Lands, et al. 1992).
- ✓ Report accidents or injuries to the Forest Service within 24 hours.
- ✓ Develop a hazardous materials and spill prevention plan and submit to the District Ranger prior to operations.
- ✓ Store no more than 30 gallons of fuel or oil in the project area. Store all fuel or oil in a secondary containment system that limits spills to the environment.
- ✓ Remove all equipment, garbage and trash resulting from the operation from National Forest system lands prior to October 1, the end of the regular operating season. Dispose garbage and trash at a State of Idaho approved site.
- ✓ Use and maintain a sanitary facility (e.g., porta-potty or self-contained camper) at the project area while operations are ongoing.
- ✓ Comply with all applicable Federal and State fire laws and regulations and take all reasonable measures to prevent and suppress fires on the area of operations and require employees, contractors and subcontractors to do likewise (36 CFR 228.11).

Cultural Resources:

- ✓ If previously undiscovered cultural resources (historic or prehistoric objects, artifacts, or sites) are exposed as a result of operations, cease operations until notification is received from a Forest Service archeologist or the District Ranger that the Forest Service and the operator has complied with provisions for mitigating unforeseen impacts as required by 36 CFR 228.4(e) and 36 CFR 800.

Reclamation:

- ✓ Reclaim test pits by:
 - Restoring subsoil and topsoil to existing natural ground contour.
 - Replanting beargrass clumps or other vegetation in topsoil.
 - Placing locally available slash and duff over topsoil and around beargrass clumps or other replanted vegetation.
 - Seeding and mulching disturbed areas with appropriate seed mix and certified weed free straw.
- ✓ Perform reclamation concurrently with the operation. Test pits and associated trails will be reclaimed as soon as practicable when testing is completed at a site.

Reclamation Bond and Water Right:

- ✓ A reclamation bond must be received for this proposal by the Forest Service before work can begin.
- ✓ Obtain a current Temporary Approval of Water Appropriation from the Idaho Department of Water Resources and submit it to the District Ranger prior to commencing operations.
- ✓ Seasonal closeout and reclamation must be completed no later than October 1. This is to ensure that all equipment is removed from the site and reclamation is complete before winter weather sets in.

Once the Forest Service receives the bond and a copy of Mr. Martin's water right, the Plan of Operations will be approved.

II. Rationale for Decision and Reasons for Categorically Excluding the Decision

A. Category of Exclusion and Rationale for Using the Category

The role of the Forest Service regarding mining activities on Forest Service system lands is to ensure that mining activities minimize adverse environmental effects to National Forest system resources, and comply with all applicable environmental laws. Congress has not given the Forest Service authority to unreasonably circumscribe or prohibit activities under the 1872 General Mining Law that are otherwise lawful.

Based on information in this document and the project record, I have determined this project is not significant in either context or intensity (40 CFR 1508.27), that no extraordinary circumstances affecting resource conditions exist (36 CFR 220.6), that this project may be categorically excluded from documentation in an EA or EIS, and that it meets all the criteria outlined for 36 CFR 220.6(e)(8) Short-term (one year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than one mile of low standard road, or use and minor repair of existing roads.

The rationale for my decision is based on: 1) the proposed action fully meeting the criteria for Categorical Exclusions, 2) the proposed action meeting the purpose and need, 3) the findings related to extraordinary circumstances, discussed below, 4) the project's consistency with laws and regulations, including the Forest Plan, 5) the on-the-ground review and discussion with resource specialists, and 6) my review of the Biological Assessments (BA), Biological Evaluations (BE), and specialists' reports.

B. Finding of the Absence of Adverse Effects to Extraordinary Circumstances

1. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species:

The Interdisciplinary Team (ID Team) Botanist, and Wildlife and Fisheries Biologists determined the proposed actions would have no effect or impact on listed or sensitive plant, wildlife, or fish species or habitat, and suitable habitat would not be altered, as documented in the Biological Assessments and Evaluations, and specialists' reports (see plant, wildlife, and fish sections of the project record), with the following exceptions.

The Wildlife Biologist determined the proposed actions may impact individuals or habitat of the following wildlife species, but are not likely to cause a trend toward federal listing or reduce viability for the populations or species: gray wolf and western (boreal) toad. However, direct, indirect, and cumulative effects to wildlife in the project area would be undetectable at scales greater than the stand level.

Additionally, for the gray wolf, habitat use during implementation for individual animals may be altered, and activities at the project site may increase the probability of negative wolf-human encounters, however, the scope, scale, and duration of activities limit potential negative effects.

For the Western (boreal) toad, individuals may be harmed, avoid the area during activities, and not return to the site post-implementation, however, the proposed activities are consistent with Nez Perce Forest Plan Amendment 20 (PACFISH), thereby limiting potential effects to the species as a whole. Furthermore, the operator requirements and Best Management Practices as detailed in the decision minimize these effects.

2. Floodplains, wetlands, or municipal watersheds:

No designated municipal watersheds exist in the analysis area. No direct or indirect significant, adverse effects to floodplains, wetlands, or municipal watersheds are proposed or expected for this project, thereby complying with EO 11988, EO 11990, and FSH 1909.15 Chapter 30.3.2.

No impaired (Clean Water Act Section 303(d) listed) waterbodies are within or directly adjacent to the project area. The water quality objectives for the Rubie Creek prescription watershed in which the project is located will not be affected by the proposed activities.

This project will have no effect on stream channel stability or downstream conditions in Ozark Creek, or on water quality or downstream beneficial uses. The proposed actions will have no effects to watershed resources, and the activities are consistent with soil and water standards in the Nez Perce National Forest Plan.

3. Congressionally designated areas, such as wilderness, wilderness study areas or national recreation areas:

The project is not located in a congressionally designated area, including wilderness, wilderness study areas, or national recreation areas.

4. Inventoried roadless areas or potential wilderness areas:

The project is not located in a roadless area or a potential wilderness area, and is not part of an inventoried roadless area.

5. Research Natural Areas:

The project area does not include land designated as Research Natural Areas.

6. American Indians and Alaska native religious or cultural sites and

7. Archaeological sites, or historical properties or areas:

The Forest Cultural Resource Specialist has conducted an appropriate inventory, and determined that this project will have no adverse effects to cultural properties because they are not eligible for the National Register of Historic Places. The State Historic Preservation Office concurred with this determination on December 9, 2010 (*Determination of Eligibility and Effect* in project record).

Additionally, the Nez Perce Tribal Government Liaison and the Nez Perce Tribe reviewed the project and determined it would not affect Nez Perce Tribe Treaty rights or Nez Perce Tribal members' abilities to exercise those rights.

III. Interested and Affected Agencies, Organizations, and Persons Contacted

On January 12, 2010, the Nez Perce National Forest mailed a letter providing information and seeking public comment to 384 individuals, organizations, a variety of state and local agencies, and

the Nez Perce Tribe. Four individuals/organizations provided comments regarding this project during the public comment period and their comments are addressed in Appendix A.

IV. Findings Required by Other Laws

Based on my review of the actions associated with this project, I find that the Max #1 Lode Exploration project is consistent with applicable Federal laws and regulations.

National Forest Management Act and Nez Perce National Forest Plan: This action is consistent with the standards and guidelines contained in the 1987 Nez Perce National Forest Plan (USDA Forest Service 1987), as amended, as required by the National Forest Management Act of 1976 (see project record for further information). Minerals management goals, objectives, and standards are accomplished and protection of fish habitat is assured.

Forest Plan Amendment 20 - PACFISH Riparian Habitat Conservation Areas (RHCAs): All activities associated with the proposed action comply with direction regarding PACFISH.

Endangered Species Act: A Forest Service Fish Biologist, Wildlife Biologist, and Botanist evaluated the proposed action with regard to the Endangered Species Act as documented in the Biological Assessments, Biological Evaluations, and specialists' reports, and determined the Max #1 Lode Exploration project is consistent with Section 7 of the Endangered Species Act.

Clean Air Act: This project will comply with the provisions of the Clean Air Act, and the rules, regulations, and permit procedures of the Environmental Protection Agency (EPA) and the Idaho Department of Environmental Quality (IDEQ).

Clean Water Act and State Water Quality Laws: The Interdisciplinary Team Hydrologist has determined that this project complies with the Clean Water Act, as amended, and state and federal water quality laws, and will protect beneficial uses. No municipal water supplies are located within, adjacent, or downstream of the project. No CWA Section 303(d) or 305(b) listed impaired waters occur within or tributary to the project area. Additionally, the operator will comply with applicable federal and state water quality standards, including regulations issued pursuant to the Clean Water Act, as amended.

National Historic Preservation Act: The Forest Cultural Resource Specialist has conducted an appropriate inventory, and determined that this project will have no adverse effects to cultural properties because they are not eligible for the National Register of Historic Places. The State Historic Preservation Office concurred with this determination on December 9, 2010 (*Determination of Eligibility and Effect* in project record). Therefore, this project meets the agency's responsibilities under the National Historic Preservation Act (16 USC 470), as amended, and is consistent with the *Programmatic Agreement between the Idaho State Historic Preservation Officer, the Advisory Council on Historic Preservation and the Region 1 National Forests in Northern Idaho Regarding the Management of Cultural Resources*.

Migratory Bird Treaty Act: No substantial losses of migratory bird habitat are expected from the implementation of this proposal, nor any measurable impact on neotropical migratory bird populations as a whole. The proposed action would comply with the Migratory Bird Treaty Act.

The project complies with the U.S. Fish and Wildlife Service Director's Order #131 related to the applicability of the Migratory Bird Treaty Act to federal agencies and requirements for permits for "take." In addition, this project complies with Executive Order 13186 because the analysis meets agency obligations as defined under the January 16, 2001 Memorandum of Understanding between the Forest Service and U.S. Fish and Wildlife Service designed to complement Executive Order 13186.

Environmental Justice: The proposed action will not disproportionately impact consumers, Native American Indians, women, low-income populations, other minorities, or civil rights of any American Citizen in accordance with Executive Order 12898. No disproportionate impacts to minority or low-income populations were identified during the effects analysis.

Prime Farm Land, Range Land, and Forest Land: The proposed action complies with the Federal Regulations for prime land. The definition of "prime" forest land does not apply to lands within the National Forest system. The project area does not contain any prime range land or farm land. Federal lands would be managed with appropriate sensitivity to the effects on adjacent lands.

Energy Requirements: No unusual energy demands are required to implement the proposed action.

Other Laws or Requirements: The proposed action is consistent with all other Federal, State, or local laws or requirements for the protection of the environment and cultural resources.

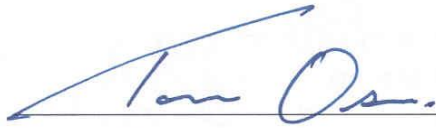
V. Administrative Review and Appeal Opportunities, and Implementation Date

This decision is not subject to appeal pursuant to Forest Service regulations 36 CFR Part 215.12(f) and may be implemented once bonding and other requirements listed above are satisfied by Mr. Martin. The plan of operations will terminate one year from the date of the operating plan approval.

VI. Contact Person

Questions regarding this decision should be sent to Marty Gardner, Nez Perce National Forest Supervisor's Office, 104 Airport Road, Grangeville, Idaho 83530 or by phone at (208) 983-1950 or fax at (208) 983-4042 during normal office hours [weekdays, 7:30 a.m. to 4:30 p.m. (PST)].

VII. Signature of Deciding Officer



TOM OSEN

Salmon River District Ranger

2/17/2011

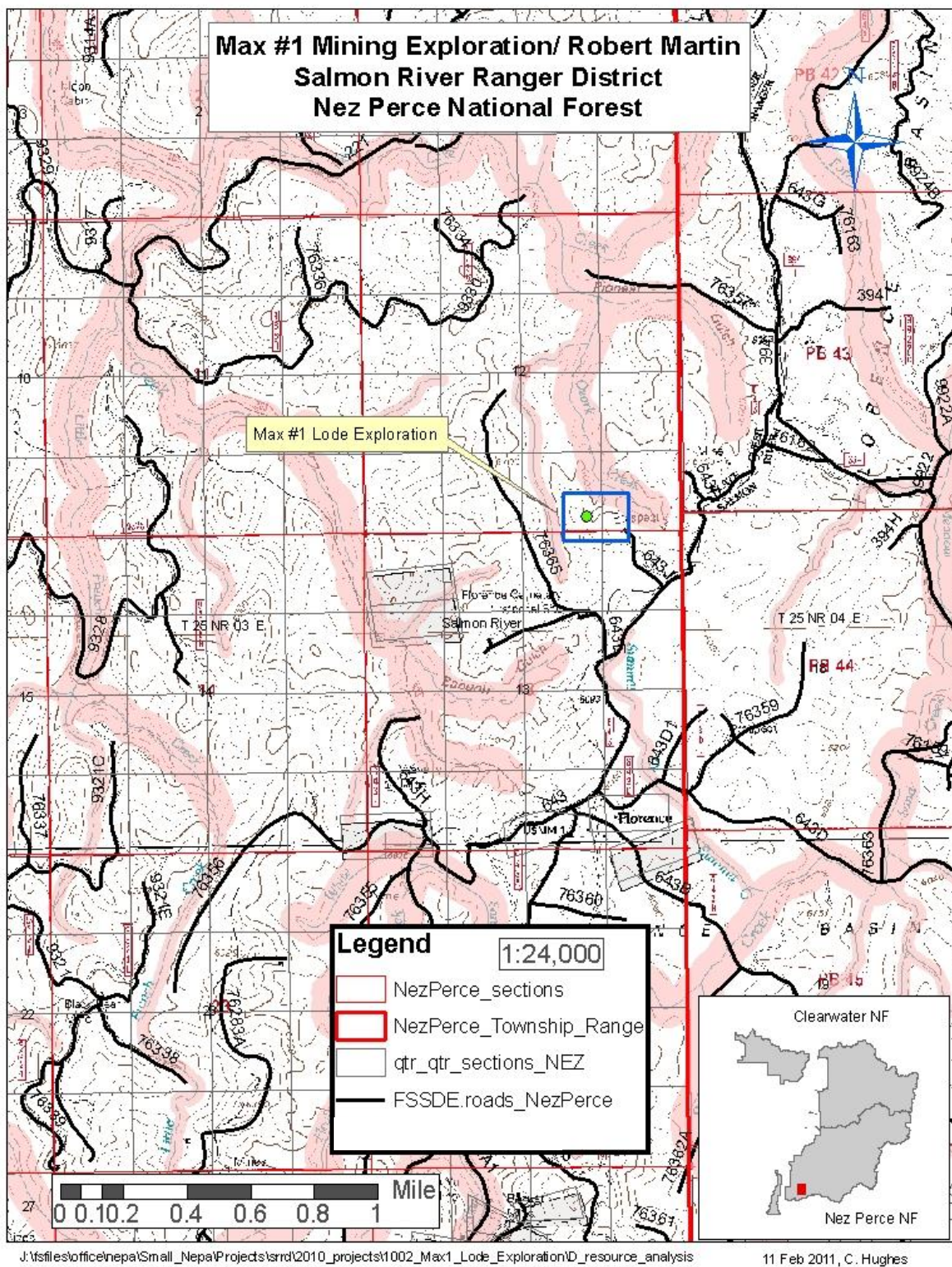
Date

cc: Marty Jones

Enclosure: Map

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Map 1. Max #1 Lode Exploration Project Map



Appendix A

Response to Public Comments

On January 12, 2010, the Nez Perce National Forest mailed a letter providing information and seeking public comment to 384 individuals, organizations, a variety of state and local agencies, and the Nez Perce Tribe. Four individuals/organizations provided comments regarding this project during the public comment period and their comments are addressed below.

Comment	Response
Planning Participant: BAIRD, PATRICK	Tribal Historic Preservation Officer/ Archaeologist Cultural Resource Program Nez Perce Tribe
<i>For the mining projects, I'm also curious as to why the Proposed Category includes cross country travel and road construction, while the Narrative summaries all promise that access will be by existing roads and trails.</i>	Although the proposed category permits activities such as cross country travel and construction of less than one mile of low standard road, no road construction is proposed for the Max #1 Lode Exploration project, and access to the project area would be by existing roads and trails.
Planning Participant: MACFARLANE, GARY	Friends of the Clearwater, Alliance for the Wild Rockies, and Wilderness Watch
<i>The legal description in the scoping letter puts this proposal in the South Fork drainage. The map shows it is in the Salmon River drainage near Florence.</i>	The correct legal of the project is T25N R3E Section 12, and the project area is located in the Ozark Creek area, in the Salmon River watershed.

Comment	Response
<p><i>Since this proposal is within an RHCA and listed fish (bull trout, salmon and steelhead) may be affected by this proposal, it must be noted the agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation, by requesting a new plan to meet the environmental concerns be submitted. (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995); Pacific Rivers Council v Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)).</i></p>	<p>As noted in IV. <i>Findings Required by Other Laws</i> above, this project is consistent with Section 7 of the Endangered Species Act.</p> <p>While the project is just within the RHCA, the stream is buffered from the project area by forest vegetation with thick ground cover providing a sufficient buffer. This buffer, along with applicable BMPs and post activity reclamation would ensure that sediments liberated from the proposed activities would not enter the nearby stream system.</p> <p>This project will have no effect on stream channel stability or downstream conditions in Ozark Creek, or on water quality or downstream beneficial uses. The proposed actions will have no effects to watershed resources, and the activities are consistent with soil and water standards in the Nez Perce National Forest Plan.</p> <p>There are no known fish populations adjacent to the project site. Interior redband trout are found in Ozark Creek downstream of the site. ESA listed fish are located miles downstream of the site. No effects to any TES fish are anticipated given project location and the nature of the disturbance.</p> <p><i>(Fish Biological Assessment and Hydrology Report in project record)</i></p>

Comment	Response
<i>Overall, the NEPA document must fully review the past, present, and reasonably foreseeable impacts on all of these species, including Forest Service sensitive and indicator species.</i>	<p>The cumulative effects of the proposal were considered. The effects of this activity have been determined to be minimal or not measurable. No meaningful cumulative effects could be identified based on the scale of this proposal when compared to past, present, or reasonably foreseeable projects. Actions consistent with 36 CFR 220.6e(8) have already been determined to produce no significant effects, either individually or cumulatively, provided no extraordinary circumstances exist related to the proposed action. Our analysis of extraordinary circumstances showed that no circumstances exist with potential for significant environmental effects. Specific evaluations for effects, including direct, indirect, and cumulative effect, on TES and sensitive fish, wildlife and plants have been completed and documented in Biological Evaluations/Biological Assessments (BE/BAs) and specialists' reports. The proposed activities are small in scope and their impacts, if any, are not measurable, are of short duration and have not been determined to be significant when considered with past, present, or foreseeable projects</p>
<i>The eventual agency decision must be based on protection of species under the ESA, NFMA, Organic Act, and agency regulations and policies.</i>	<p>The Max #1 Lode Exploration project is consistent with applicable Federal laws and regulations, including the ESA, NFMA, Forest Service Organic Act of 1897 as amended, and other agency regulations and policies (See Section IV. <i>Findings Required by Other Laws</i> above.)</p>

Comment	Response
<p><i>The agency is obligated to ensure that the public's resources are not being jeopardized by actions pursuant to invalid mining claims. The NEPA document is the appropriate venue for this analysis. Any "rights" relied upon by the agency in making a decision can only be based on the discovery of a "valuable mineral deposit" on each claim to be used by the applicant. (30 U.S.C. 22). The Forest Service cannot presume that the filing of a mining claim means that the claim is valid (i.e. that the "rights" relied upon by the applicant are rights at all). A mining claim location does not give presumption of a discovery. (Ranchers Exploration v. Anaconda). "[L]ocation is the act or series of acts whereby the boundaries of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim." (Cole v. Ralph, 252 U.S. 286, 294-96 (1920)).</i></p> <p><i>The Department of the Interior also has rules that "rights" to develop federal land do not arise without a discovery:</i></p> <p><i>The essential conclusion that a mining claim cannot be valid without a discovery has been restated by the courts as well as the Department. "Discovery is the sine quo non of an entry to initiate vested rights against the United States." (Davis v. Nelson, 329 F2d 840, 845 (9th Cir. 1964)); ". . . that discovery is the prerequisite to the validity of a mining claim cannot be disputed.") Fresh v. Udall, 228 F.Supp. 738, 740 (D. Colo. 1964)).</i></p> <p><i>(U.S. v. Bartels, 6 IBLA 126, 127 (1972)).</i></p>	<p>In order to prospect, explore, and make a discovery of a valuable mineral deposit or establish valid mining claims, the operator has a statutory right under the 1872 Mining Law to enter National Forest system lands to conduct reasonable activities to prospect and explore for mineral resources conducted in a way that minimizes adverse environmental impacts on National Forest system surface resources (36 CFR 228.1).</p> <p>As discussed above in <i>I. Decision</i>, the proposed action is not to file a mining claim, but to permit Mr. Robert Martin to conduct activities for the purpose of mineral exploration.</p> <p>As discussed above in <i>II. Rationale for Decision and Reasons for Categorically Excluding the Decision</i>, no adverse environmental effects will result from implementation of this project. Therefore, the proposed action is a permissible activity.</p>

Comment	Response
<p><i>The IBLA also noted that since each claim must contain a valuable mineral deposit, “the recovery expected from each claim must not only exceed the costs of mining, transporting, milling, and marketing the particular mineral deposit on that claim but each claim must also bear a proportionate share of the development and capital costs attributable to the combined operation.” (U.S. v. Collord, 128 IBLA 266, 287-288 (1994)).</i></p> <p><i>Furthermore, the Interior Department requires that the costs of compliance with environmental regulations be factored into the validity determination. (United States v. Pittsburgh Pacific, 30 IBLA 388 (1977); Leshy, The Mining Law, (Resources for the Future, 1987); United States v. Kosanke Sand Corporation, 80 IBLA 538, 546-547 (1973)).</i></p> <p><i>Since the federal government can review and challenge the validity of any mining claim at any time (Cameron v. U.S., 252 U.S. 450(1920)), it must inquire into these issues at the outset as part of its NEPA review processes. This inquiry is also required to the Forest Service's duty under the Organic Act, prior to approval of an operation.</i></p>	<p>Exercise of the right to access for mineral entry does not require the staking of a mining claim, a fact recognized in the Forest Service locatable mineral regulations at 36 CFR 228.3(a), where mineral operations are defined and it is clearly stated that the Forest Service’s regulations apply to all functions, work, activities, and uses reasonably incidental to all phases of mineral exploration and mining under the 1872 Mining Law, whether located on or off mining claims. While subject to regulation by the Forest Service under the 1897 Organic Act and the 1955 Surface Resources Act, miners still retain these general rights under the 1872 Mining Laws.</p> <p>The proposed action is not to file a mining claim, but to permit Mr. Robert Martin to remove a one-yard bulk sample from a caved adit and an existing shallow pit, and to extract a channel sample of material between the adit and pit for the purpose of mineral exploration. Recovery is unknown at this time. Validity determination is not a part of the proposed action.</p>
<p><i>The Forest Service cannot restrict its authority based on incorrect and insupportable assumptions that the claim(s) on the sites contain valuable mineral deposits under the mining laws. The agency's duty to protect the resources under the ESA, NFMA as well as its duty to make informed decisions under NEPA, would be violated by such an action. This is important in this case as the stones being sought may be classified as a common variety mineral rather than a locatable mineral.</i></p>	<p>The proposed action is not to file a mining claim, but to permit Mr. Robert Martin to remove a one-yard bulk sample from a caved adit and an existing shallow pit, and to extract a channel sample of material between the adit and pit for the purpose of mineral exploration. Recovery is unknown at this time. Validity determination is not a part of the proposed action.</p> <p>The proposed action is consistent with ESA and NFMA (see Section IV. Findings Required by Other Laws above).</p>

Comment	Response
<i>Again, in light of the above concerns, a CE is not adequate. An EA should be prepared.</i>	<p>Projects may be categorically excluded from documentation in an EA or EIS if they meet all the criteria outlined in 36 CFR 220.6. We have determined this project is not significant in either context or intensity (40 CFR 1508.27) and that no extraordinary circumstances exist (36 CFR 220.6), and therefore find the use of a CE appropriate.</p>
Planning Participant: SMITH, BRADLEY	Idaho Conservation League
<i>We encourage you to closely evaluate the impacts to any 303(d) listed streams, to avoid any sediment delivery to streams, to avoid work within RHCA's, especially where T,E, and S species may be present.</i>	<p>The proposed activities are located in the headwaters of Slate Creek which has been determined to be a fully supporting watershed. The proposed activities will have no effect on the conditions or objectives of the State's water quality determination (<i>Hydrology Report</i> in project record).</p> <p>While the project is just within the RHCA, the stream is buffered from the project area by forest vegetation with thick ground cover providing a sufficient buffer. This buffer, along with applicable BMPs and post activity reclamation would ensure that sediments liberated from the proposed activities would not enter the nearby stream system.</p> <p>This project will have no effect on stream channel stability or downstream conditions in Ozark Creek, or on water quality or downstream beneficial uses. The proposed actions will have no effects to watershed resources, and the activities are consistent with soil and water standards in the Nez Perce National Forest Plan.</p> <p>There are no known fish populations adjacent to the project site. Interior redband trout are found in Ozark Creek downstream of the site. ESA listed fish are located miles downstream of the site. No effects to any TES fish are anticipated given project location and the nature of the disturbance. (<i>Fish Biological Assessment</i> and <i>Hydrology Report</i> in project record)</p>

Comment	Response
<p><i>The Forest Service needs to substantiate the validity of all associated claims. An objective validity analysis, including a marketability and prudent person test, needs to be performed to take into account the following factors:</i></p> <ul style="list-style-type: none"> • <i>the means of access permitted, which will affect the commercial viability of the mining claim (see Clouser vs. Espy);</i> • <i>current mineral prices;</i> • <i>the increased expense of mitigation and monitoring measures required to comply with all federal and state laws including the National Forest Management Act standards and guidelines, the Nez Perce National Forest Plan, Riparian Habitat Conservation Areas, and PACFISH/INFISH guidelines;</i> • <i>mitigation of impacts to species that have become threatened or endangered since the last validity test;</i> • <i>mitigation measures for noxious weeds;</i> • <i>current labor costs;</i> • <i>current fuel costs;</i> • <i>bonding requirements and costs.</i> 	<p>In order to prospect, explore, and make a discovery of a valuable mineral deposit or establish valid mining claims, the operator has a right under the 1872 Mining Law to enter National Forest system lands and conduct reasonable activities to prospect and explore for mineral resources. Exercise of the right to access for mineral entry does not require the staking of a mining claim, a fact recognized in the Forest Service locatable mineral regulations at 36 CFR 228.3(a), where mineral explorations are defined and it is clearly stated that the Forest Service's regulations apply to all functions, work, activities, and uses reasonably incidental to all phases of mineral exploration and mining under the 1872 Mining Law, whether located on or off mining claims. While subject to regulation by the Forest Service under the 1897 Organic Act and the 1955 Surface Resources Act, miners still retain these general rights under the 1872 Mining Laws.</p> <p>The proposed action is not to file a mining claim, but to permit Mr. Robert Martin to remove a one-yard bulk sample from a caved adit and an existing shallow pit, and to extract a channel sample of material between the adit and pit for the purpose of mineral exploration. Validity determination is not a part of the proposed action.</p>

Comment	Response
<i>The US Forest Service must submit a biological assessment on all possible threats to listed species, including lynx, bull trout, Steelhead trout and any other listed species. The Forest Service must consult with the USFWS and NOAA - Fisheries. No incidental take permits should be authorized in association with these projects.</i>	<p>The ID Team Botanist and Wildlife and Fisheries Biologists analyzed the proposed actions and prepared site-specific Biological Assessments, and determined the proposed actions would have no direct, indirect, or cumulative effect or impact on listed species or habitat, and suitable habitat would not be altered (see project record).</p> <p>Formal consultation between the Services and the Forest Service is required if a proposed action may affect a listed species or designated critical habitat (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat). [50 CFR §402.02, 50 CFR §402.14]. Because this project will have no effects to listed species or designated critical habitat, formal consultation is not required, and no take permits are needed.</p>
<i>The Forest Service needs to describe, avoid, and mitigate potential impacts on lynx and wolverine. We are concerned that the increase in human activity, particularly with regard to the continual noise from drilling operations, will displace these species or prevent them from using these areas as corridors. As such, we encourage the Forest Service to limit the number of entries to the minimum needed and to only allow one drill pad to be operated at a time.</i>	<p>The Wildlife Biologist determined the proposed actions would not affect lynx and would not impact wolverine (<i>Wildlife Biological Assessment and Evaluation</i> in project record).</p>

Comment	Response
<p><i>None of the proposed activities should occur within a Riparian Habitat Conservation Area. All operations must comply with the protective standards and regulations stated in the Forest Plan concerning mining, road construction, and tree removal. No Forest Plan amendments should be permitted.</i></p>	<p>While the project is just within the RHCA, the stream is buffered from the project area by forest vegetation with thick ground cover providing a sufficient buffer. This buffer, along with applicable BMPs and post activity reclamation would ensure that sediments liberated from the proposed activities would not enter the nearby stream system.</p> <p>This project will have no effect on stream channel stability or downstream conditions in Ozark Creek, or on water quality or downstream beneficial uses. The proposed actions will have no effects to watershed resources or to any TES fish or habitat given the project location and the nature of the disturbance, and the activities are consistent with the Forest Plan, including the PACFISH amendment. Incidental tree removal may occur, consistent with the Forest Plan. No road construction or Forest Plan amendments are proposed.</p>
<p><i>If activities will occur within RHCAs, such mining and its effects on T,E and S species represents and extraordinary circumstance and an EA must be prepared. Further, the project analysis must consider Riparian Management Objectives and how they will be maintained and restored following project activities.</i></p>	<p>While the project is just within the RHCA, the ID Team determined that the project will produce negligible environmental effects, directly or indirectly, and individually or cumulatively, on the physical, biological, or social quality of the human environment. The proposed actions will have no effects to watershed resources or to any TES fish or habitat. The project is consistent with the Forest Plan, including the PACFISH amendment which describes the Riparian Management Objectives (RMOS), and will have no effect on these RMOS, including pool frequency, water temperature, large woody debris, bank stability, lower bank angle, or width-to-depth ratio because of the project location in relation to the stream channel and the nature of the disturbance.</p> <p>Projects may be categorically excluded from documentation in an EA or EIS if they meet all the criteria outlined in 36 CFR 220.6. We have determined this project is not significant in either context or intensity (40 CFR 1508.27) and that no extraordinary circumstances exist (36 CFR 220.6), and therefore find the use of a CE appropriate.</p>

Comment	Response
<p><i>All fuel and solvents need to be properly contained, labeled, and stored outside of Riparian Habitat Conservation Areas. Hazardous materials should be transported in small amounts to minimize impacts if there is a spill. A hazardous material plan needs to be in place in the event of a fuel or solvent leak anywhere along the transportation route. Hazardous wastes including grease, lubricants, oil, and fuels need to be disposed off off-site in an environmentally appropriate manner on a weekly basis. Fuel containment equipment, including chemical absorbers and booms to intercept stream transport need to be on site. All workers need to be trained in the use of this equipment.</i></p>	<p>Criteria for approving the Plan of Operation includes the proper handling of hazardous materials, and are included in the proposed action as follows:</p> <ul style="list-style-type: none"> ✓ Develop a hazardous materials and spill prevention plan and submit to the District Ranger prior to operations. ✓ Store no more than 30 gallons of fuel or oil in the project area. Store all fuel or oil in a secondary containment system that limits spills to the environment.
<p><i>We have encountered numerous mining projects that have violated BMPs and operating plans. Unfortunately, monitoring has been insufficient to discover these problems in a timely fashion. Monitoring should be conducted at weekly intervals throughout the mining operation and throughout reclamation.</i></p>	<p>The Forest Service will comply with 36 CFR 228.7 regarding inspection and noncompliance.</p>
<p><i>The Forest Service should establish noise limits such that disturbance to surrounding wildlife is minimized and require the operator to abide by these limits.</i></p>	<p>The Wildlife Biologist determined the proposed actions would have no effect or impact on listed or sensitive wildlife species or habitat, with the following exceptions. She determined the proposed actions may impact individuals or habitat of gray wolf and western (boreal) toad, but are not likely to cause a trend toward federal listing or reduce viability for the populations or species, based on potential dog/wolf encounters and the potential for the toad to be harmed, avoid the area, or not return to the area after implementation. However, the scope, scale, and duration of activities limit potential negative effects to these species (<i>Wildlife Biological Assessment and Evaluation</i> in project record). The noise levels of the proposed activities would be similar to those of small scale logging operations. Additionally, impacts to wildlife resulting from noise will be minimal due to the relatively short duration of the exploration activity (one to three days per site).</p>

Comment	Response
<p><i>Ground disturbance and vehicular traffic will accelerate the spread of noxious weeds, an ecological problem of epidemic proportions. All equipment should be cleaned to dislodge any soil, seeds, and vegetation before entering National Forest system property. Work crews trained in noxious weed recognition and removal should patrol the project area. Weeds or microtrash should be removed. These stipulations need to be included in the Plan of Operations.</i></p>	<p>Criteria for approving the Plan of Operation address noxious weeds, and are included in the proposed action as follows:</p> <ul style="list-style-type: none"> ✓ Wash all vehicles and equipment used at the site before being brought onto National Forest system lands to prevent the spread of noxious weeds. ✓ Place weed free straw bales or install silt fence in places as identified by a Forest Service representative to minimize sediment migration from stockpiles and/or raw earth. ✓ Follow the State of Idaho Best Management Practices (BMPs) for all surface disturbing activities, reclamation, and abandonment. ✓ Seeding and mulching disturbed areas with appropriate seed mix and certified weed free straw. <p>Criteria for approving the Plan of Operation address trash, and are included in the proposed action as follows:</p> <ul style="list-style-type: none"> ✓ Remove all equipment, garbage and trash resulting from the operation from National Forest system lands prior to September 15, the end of the regular operating season. Dispose garbage and trash at a State of Idaho approved site.
<p><i>If sumps are proposed for use, drilling operations should be suspended if the sump approaches capacity to allow infiltration to occur.</i></p>	<p>For this proposal, only small drills (1" to 1½") are proposed for use, and water used for lubrication would be of small quantities. Additionally, criteria for approving the Plan of Operation address process water management, and are included in the proposed action as follows:</p> <ul style="list-style-type: none"> ✓ Collect process water in the existing pit. Regulate discharge to prevent overtopping the pit, and/or land apply excess water on a site designated by the Forest Service. (Application sites will typically be natural sumps or depressions, pits, or trap(s) that avoid impacts to wetlands or streams and minimizes impacts to other surface resources. Application rate will be such that overland flow is avoided.)

Comment	Response
<i>Regarding water withdrawal for mining operations, the designated water pumping location needs to minimize impacts on riparian vegetation and soil disturbance. The water pump needs to be properly lined with an impermeable liner to protect the soil from the full volume of diesel fuel or oil in case there is a leak. The timing of water withdrawal should be defined to avoid impacts to aquatic organisms.</i>	<p>If claimant needs to withdraw water from a watercourse, a Temporary Approval of Water Appropriation from the Idaho Department of Water Resources would be required, which includes protection measures for riparian vegetation and soil disturbance. Additionally, other criteria for approving the Plan of Operation address process water management, and are included in the proposed action as follows:</p> <ul style="list-style-type: none">✓ Cover water pump intake hose with a 3/32" mesh screen.✓ Follow the State of Idaho Best Management Practices (BMPs) for all surface disturbing activities, reclamation, and abandonment.
<i>Mining exploration has a well-documented history of adversely impacting water quality. All drilling activities need to be conducted outside of Riparian Habitat Conservation Areas. We recommend the use of directional drilling to reduce surface disturbances and minimize the number of drill pads needed.</i>	<p>The proposed drill holes will be approximately 1" to 1½" in diameter. While the project is just within the RHCA, the proposed actions will have no effect on stream channel stability or downstream conditions in Ozark Creek, or on water quality or downstream beneficial uses. The proposed actions will have no effects to watershed resources, and the activities are consistent with soil and water standards in the Nez Perce National Forest Plan. (Hydrology Report in project record)</p>

Comment	Response
<p><i>Weed-free straw bales should line any drainages to protect streams from sedimentation and be removed upon completion of operations. If any drilling fluids contain any contaminants, sumps should be double lined and have a leak detection and removal system to prevent groundwater contamination. The sump containers should be large enough to contain all contaminants as well as precipitation from 24-hour, 100 year rainfall events.</i></p>	<p>Criteria for approving the Plan of Operation address sedimentation and water management, and are included in the proposed action as follows:</p> <ul style="list-style-type: none"> ✓ Place weed free straw bales or install silt fence in places as identified by a Forest Service representative to minimize sediment migration from stockpiles and/or raw earth. ✓ Follow the State of Idaho Best Management Practices (BMPs) for all surface disturbing activities, reclamation, and abandonment. ✓ Collect process water in the existing pit. Regulate discharge to prevent overtopping the pit, and/or land apply excess water on a site designated by the Forest Service. (Application sites will typically be natural sumps or depressions, pits, or trap(s) that avoid impacts to wetlands or streams and minimizes impacts to other surface resources. Application rate will be such that overland flow is avoided.)
<p><i>The Forest Service should require the use of best management practices (BMPs) including water bars, rolling dips, and silt fences in a manner that minimizes water quality impacts.</i></p>	<p>Criteria for approving the Plan of Operation address BMPs and are included in the proposed action as follows:</p> <ul style="list-style-type: none"> ✓ Follow the State of Idaho Best Management Practices (BMPs) for all surface disturbing activities, reclamation, and abandonment.
<p><i>To help address impacts on water quality from the drilling activity itself, the Forest Service should require additional mitigation measures for test holes near riparian areas.</i></p>	<p>While the project is just within the RHCA, the stream is buffered from the project area by forest vegetation with thick ground cover providing a sufficient buffer. This buffer, along with applicable BMPs and post activity reclamation would ensure that sediments liberated from the proposed activities would not enter the nearby stream system. This project will have no effect on stream channel stability or downstream conditions in Ozark Creek, or on water quality or downstream beneficial uses. The proposed actions, including required mitigation, will have no effects to watershed resources or to any TES fish or habitat given the project location and the nature of the disturbance, and the activities are consistent with the Forest Plan.</p>

Comment	Response
<p><i>The effects of mining activities on surface water and groundwater quantity and quality need to be determined for a full range of flow conditions at the mining site and along the transportation routes. This geochemical analysis should include the following factors:</i></p> <ul style="list-style-type: none">• <i>sedimentation</i>• <i>transportation of hazardous or toxic materials</i>• <i>on-site water needs</i>• <i>source of water</i>• <i>the depth and flow of water table</i>• <i>drilling depth</i>• <i>the potential for chemicals and toxins to leach into surface and ground waters</i>• <i>water capture and subsequent leakage by sumps</i>• <i>waste water discharge from site</i>• <i>storm water runoff</i> <p><i>The core samples should also be tested for acid mine drainage and heavy metals contamination.</i></p>	<p>The ID Team Hydrologist determined the proposed actions would not have any effects on watershed resources. While the project is just within the RHCA, the stream is buffered from the project area by forest vegetation with thick ground cover providing a sufficient buffer. This buffering along with applicable BMP's and post activity reclamation would ensure that sediments liberated from the proposed activities would not enter the nearby stream system.</p> <p>This project will have no effect on stream channel stability or downstream conditions in Ozark Creek, or on water quality or downstream beneficial uses. Best Management practices will be applied as appropriate to ensure that the State of Idaho water quality standards are met or exceeded.</p> <p>The ID Team Fisheries Biologist determined the proposed actions will have no effects to any TES fish or habitat given the project location and the nature of the disturbance, and the activities are consistent with the Forest Plan. (<i>Hydrology Report</i> and <i>Fish Biological Assessment</i> in project record)</p>
<p><i>Where any impacts to 303(d) listed streams are anticipated, the Forest Service should consult closely with DEQ and require 401 Certification pursuant to the Clean Water Act, prior to the issuance of any permits.</i></p>	<p>The proposed activities are located in the headwaters of Slate Creek which has been determined to be a fully supporting watershed. The proposed activities will have no effect on the conditions or objectives of the State's water quality determination.</p>

Comment	Response
<i>The Forest Service needs to specify whether mine operators will be living on or off-site with regard to any of these proposals. All garbage must be disposed of appropriately in a timely fashion. To avoid contaminating the area with human feces, a portable toilet river-running style toilet should be located on the site and serviced regularly. To minimize impacts to recreationists and wildlife, operations should be limited to daylight hours and generators should be limited to campground hours. Regularly inspected fire extinguishers and shovels need to be placed in all vehicles. To reduce risks of fires, all on-site burning should be conducted within a fire pan or fire ring. Only combustible materials should be placed within the fire ring. Burning should not be allowed during moderate to high fire risk periods.</i>	<p>Criteria for approving the Plan of Operation address operator living conditions and are included in the proposed action as follows:</p> <ul style="list-style-type: none">✓ Remove all equipment, garbage and trash resulting from the operation from National Forest system lands prior to September 15, the end of the regular operating season. Dispose garbage and trash at a State of Idaho approved site.✓ Use and maintain a sanitary facility (e.g., porta-potty or self-contained camper) at the project area while operations are ongoing. <p>Exploration related work will be limited to daylight hours. The operations are located at an isolated area, and the proposed action would not change the scenic quality of the area. The operator will be subject to all applicable state and federal fire regulations.</p>
<i>We are also concerned about recreational and wildlife impacts in terms of noise and site occupation. Water pumping and drilling should be limited to daylight hours to reduce impacts on recreationists and wildlife.</i>	<p>Exploration related work will be limited to daylight hours. Additionally, this site is isolated from recreational facilities.</p> <p>The noise levels of the proposed activities would be similar to those of small scale logging operations. Additionally, impacts to wildlife resulting from noise will be minimal due to the relatively short duration of the exploration activity (one to three days per site).</p>
<i>All activities need to be completed within one year from issuance of the permit or the bond should be forfeited.</i>	<p>Plan of operations processed under 36 CFR 220.6(e)(8) are valid for a period of one year.</p>

Comment	Response
<i>The Forest Service needs to analyze cumulative effects from past, current, and foreseeable mining, timber, or recreational activities in and around the project area.</i>	<p>The cumulative effects of the proposal were considered. The effects of this activity have been determined to be minimal or not measurable. No meaningful cumulative effects could be identified based on the scale of this proposal when compared to past, present, or reasonably foreseeable projects. Actions consistent with 36 CFR 220.6e(8) have already been determined to produce no significant effects, either individually or cumulatively, provided no extraordinary circumstances exist related to the proposed action. Our analysis of extraordinary circumstances showed that no circumstances exist with potential for significant environmental effects. Specific evaluations for effects, including direct, indirect, and cumulative effect, on TES and sensitive fish, wildlife and plants have been completed and documented in Biological Evaluations/Biological Assessments (BE/BAs) and specialists' reports. The proposed activities are small in scope and their impacts, if any, are not measurable, are of short duration and have not been determined to be significant when considered with past, present, or foreseeable projects.</p>
<i>The reclamation of the area must take place concurrently with the mining operation and return the site to a more natural condition than presently exists. Only one drill hole should operate at one time.</i>	<p>Reclamation will occur concurrently, as only one pit will be open at a time.</p>

Comment	Response
<p><i>We believe that additional obliteration of non-system roads and riparian restoration should be core components of any reclamation plan.</i></p> <p><i>Any topsoil or large woody debris should be salvaged and replaced following operations.</i></p> <p><i>This bond should cover refilling all trenches, drill holes, stabilizing waste rock piles, lining and capping mining wastes, recontouring and revegetating the site, removing noxious weeds, and naturalizing the area. Complete reclamation should occur as soon as possible after operations cease. All reclamation activities should be complete by Fall 2011.</i></p>	<p>If the opportunity presents itself, and the operator is willing, we do encourage mitigating historic impacts. The Forest Service is continually looking for partners and additional funding to cleanup historic mining impacts.</p> <p>Criteria for approving the Plan of Operation address topsoil, large woody debris, and reclamation and are included in the proposed action as follows:</p> <ul style="list-style-type: none"> ✓ Set aside cleared slash and green vegetation (e.g., beargrass) during test pit construction. Remove vegetation in clumps, if possible, with the soil mass intact. Store excavated topsoil and subsoil in separate stockpiles to be used during reclamation. Temporarily replant vegetation clumps in the topsoil stockpile. ✓ Backfill and reclaim each test pit as soon as testing has been completed for that site. ✓ Reclaim test pits by: <ul style="list-style-type: none"> ○ Restoring subsoil and topsoil to existing natural ground contour. ○ Replanting beargrass clumps or other vegetation in topsoil. ○ Placing locally available slash and duff over topsoil and around beargrass clumps or other replanted vegetation. ○ Seed and mulch disturbed areas with appropriate seed mix and certified weed free straw. ✓ Perform reclamation concurrently with the operation. Test pits and associated trails will be reclaimed as soon as practicable when testing is completed at a site. <p>Final reclamation would be complete at the end of the one year period.</p> <p>Prior to approval, the operator will be required to submit a reclamation bond. A detailed bond calculation will be completed by the Forest Service. The bond amount for the operation will cover reclamation costs associated with equipment rental, mobilization, earthwork, revegetation, and monitoring.</p>

Max #1 Lode Exploration Project Decision Memo

Comment	Response
<i>The following comments derive from a project on the Idaho Panhandle NFs, but ICL would like them to apply to the current projects.</i>	We considered your comments for the Idaho Panhandle NF project, but determined because these comments are not specific to this project and are referencing a different type of activity, that they were not relevant to the Max #1 Lode Exploration project.
Planning Participant: STEWART, DANIEL	State of Idaho Department of Environmental Quality
<p><i>These projects are considered a nonpoint source activity by the Idaho Water Quality Standards and are subject to IDAPA 58.01.02.350. IDAPA 58.01.02.350 requires a monitoring plan be provided to the Department if a project is reviewed for compliance. The monitoring plan, when implemented, will provide information to the Department adequate to determine the effectiveness of the approved or specialized best management practices in protecting the beneficial uses of the water, and will provide a process for modifying the approved or site-specific best management practices in order to protect beneficial uses.</i></p> <p><i>Approved best management practices that may apply to your project include “Rules Pertaining to the Idaho Forest Practices Act” IDAPA 20.02.02; “Stream Channel Alteration Rules” IDAPA 37.03.07; and “Rules Governing Exploration and Surface Mining in Idaho,” IDAPA 20.03.01. Specialized best management practices may be required to address water quality protection objectives not addressed by the above listed approved best management practices.</i></p>	<p>For this project, a BMP monitoring plan will be provided to DEQ if requested. The plan will provide documentation of BMP implementation and response for the State of Idaho DEQ and Nez Perce National Forest to determine compliance and effectiveness.</p> <p>Best Management Practices (BMPs) were used to plan this project and are part of the proposed action.</p>

Comment	Response
<i>The Max #1 Lode Exploration, T29N, R6E, SE ¼ Sec. 24, Ozark Creek Drainage. I was unable to locate an Ozark Creek either on the USFS map or the 1:24K topo map at that location. Perhaps my mistake. Regardless, the proposal should identify whether any stream and or water will be disturbed by this proposal.</i>	<p>The correct legal of the project is T25N R3E Section 12, and the project area is located on the ridge to the south of the headwaters of Ozark Creek, in the Salmon River watershed.</p> <p>While the project is just within the RHCA, the stream is buffered from the project area by forest vegetation with thick ground cover providing a sufficient buffer. This buffer, along with applicable BMPs and post activity reclamation would ensure that sediments liberated from the proposed activities would not enter the nearby stream system.</p> <p>This project will have no effect on stream channel stability or downstream conditions in Ozark Creek, or on water quality or downstream beneficial uses. The proposed actions will have no effects to watershed resources, and the activities are consistent with soil and water standards in the Nez Perce National Forest Plan.</p>